

United States District Courts

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Western District of Arkansas

Marcus Walton - Plaintiff

v. Case # 6:20-cv-06033-SOH-BAB

Dillon R. Voss - Defendant Lt. a.l.

The plaintiff moves pursuant to Rule 34(b) and 347(a), Fed. R. C.v. P. for an order compelling the defendants to produce for inspection and copying the documents requested on July the 15th 2020 also - August the 17th, 2020 but was part of the Court decree on July 13, 2020 to be delivered in the initial scheduling order.

Declaration in Support of Motion to Compel

Marcus Walton declares under penalty of perjury:

1. I am the plaintiff in this case. I make this affidavit in support of my motion to Compel discovery.
2. On May 29, 2020 in the initial scheduling order the Courts ordered defendants to release all medical reports all witness statements also incident reports.
3. The Defendants response to the Courts decree was not under order of the decree only sending replicated versions of the medical records the mental health records and none of the witness statements on the plaintiff's behalf.
4. On July 15, 2020 I wrote the defendants Counsel pointing out that their response was unacceptable and requested a response but was ignored. no response period. "exhibit 1"
5. Defendants Counsel did not respond to any of my letters that I sent on two different occasions "Exhibit 2 and 3," no response.

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6. The letter written on 8-17-2020 in an attempt to resolve the dispute informally as required by local rule. A copy of all letters are inclosed. Still no response.
7. Defendants objections are waived as a result of their failure to make them in a timely manner, as set forth in the brief accompanying this motion.
8. Defendants' objections on the grounds that the discovery sought is irrelevant, burdensome, and privileged have no merit as set forth in the brief accompanying this motion.

Brief to Support Motion to Compel Discovery pages.

Statement of The Case

This is a 1983 action filed by a prisoner at Warner Super Max seeking damages, a declaratory judgment, and relief based on the use of excessive force, the denial of procedural due process, and denial of medical care.

Statement of facts

On May 28, 2020 the Courts served an initial scheduling order for production of documents pursuant to Rule 34, Fed. C. P. As set forth in the plaintiff's declaration, the defendants failed to respond within 30 days and did not make an effort to obtain an extension from the Court or by contacting the plaintiff. After two months, the plaintiff requested a response, and still haven't received one. Defendant's Counsel has not responded to the plaintiff's efforts to resolve this dispute. See plaintiff declaration and plaintiff has followed all orders "this time" set forth by the Courts.

Argument

point 1.

Defendants have waived their objection by their failure to respond timely to the request.

The rules provide that responses and objections to request for production of documents are to be served within 30 days of the request unless the Court grants a shorter or longer time.

Rule 34, Fed. R. C. V. P. The defendants, however, in almost 2 months have not responded or objected properly. Or have they seeked permission from the Courts.

It is well established in federal practice that "discovery objections are waived if a party fails to object timely"

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to production request or other discovery efforts," Godsey v. United States, 133 F.R.D. 111, 113 (S.D. Miss. 1990); accord, Marvin v. Nationwide Federal Credit Union, 229 F.R.D. 364, 368 (D. Conn. 2005); Safeco Ins. Co. of America v. Raw Storm, 183 F.R.D. 668, 670-73 (C.D. Cal. 1998) and cases cited. This waiver is enforced even if the objections are based on a claim of privilege, "which should be for fact the foregoing records have been requested through staff and have been denied."

Argument

Point 2.

The Discovery Sought is Relevant to the Claims and Defenses in this Case.

Defendants belated objections state the documents requested by the plaintiff are irrelevant to the action. Their arguments are frivolous. Rule 26(6)(1), Fed. R. Civ. P., permits discovery of "any nonprivileged matter that is relevant to any party's claim or defense. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."

Each item sought by the plaintiff is relevant to the claims and defense in the case, as explained below.

- A. Witness Statements written on my behalf by Joe Cook also Roy Britten it proves my account of events and those are my trial witness.
- B. All mental health records and evaluations they prove my depression unstable mental health and my claims to be factual

Pages

- C The medical of the blunt force trauma to my back that proves I never had a urinary track infection.
- D The employee and institutional standards the defense states they don't know what i'm talking about [redacted] in their response. "objection" But on 7-20-2020 at 4:56pm Document Number 48 Supplement 1B or 2B you can clearly see two arrows pointing to the policies. They claim not to have.
- E The Screen Shots still shots of all defendants struck me as I lay on the ground unconscious and incoherent proves I never fought back and no one tried to restrain me only beat me So I can submit into Evidence before the Courts.

Conclusion.

For the foregoing reasons, the Court should grant plaintiff's motion to compel discovery.

8-3-2020

Marie Walton

Po Box 600

Grady AR 71644

Respectfully Submitted,
[Signature]

Exhibit 1

Mr. Michael Mosley

In the initial scheduling order the judge ordered all witness statements as well as incident reports are to be received by July 13, 2020 on July the 20, 2020 I am in possession of the documents you've decided to send. But you did not include the witness statements on my behalf from Joe Cook and Ray Britton pursuant to Fed Rule of Civil P. 7.2(g) also 37(a) (1)

I am conferring in good faith that you will send them. The initial scheduling order states 20 days after the documents are due a party can file a motion to complete for non compliance by time you receive this correspondence you will have from 15 to 10 days before I file a motion to complete or contempt of court.

Also I've put in further request to review the video and have been denied. Thank you.

Also since you won't provide a copy of employee Standard or institution Standards the ~~initial~~ initial scheduling order stated all

policies you've failed to send

~~7/15/20~~

then I'm filing a motion to complete and contempt motion for those as well 15 days. How are you not in possession of your own policy?

Exhibit 1

United States District Courts

western District of Arkansas

marcus walton - Plaintiff

V. Case# 6:20-CV-06033-SOH-BAB

Dillion R Voss -Defendant et al.

Request for production of Documents
pursuant to Rule 34, Fed. C.V. P.

In the initial scheduling order you was ordered to release all medical records that in Clides mental Health I was only sent still an redacted copy of them both. I've requested them still I've been denied again. So I'm asking for my full mental Health records not the two pages you sent. I'm asking for all reports made by mental Health staff on mental stability.

ALSO I'm asking for the report typed in by the nurse on 2-6-2020 of the blunt force trauma that was the cause of blood in my urine. That I watched her type in with my own eyes.

I was suppose to receive this information on 7-13-2020 but you've continued to disobey Courts orders and send only the things you feel is necessary. These redacted versions are unacceptable.

Pursuant to Rule 7.2(a) and 37(a)(1) I'm confeing in good faith that you'll send them. Or I will file a motion to Compel and a Contempt of Court cause the order stated all not redacted version. I'll be filing in 20 days with a copy of this letter

Request for Discovery

personant Rule 34 Fed. C.R. P.

1. I would like a still, screen shot of me on the ground being punched by Lt. Ebony Harris. If you watch video it is clearly shown.
2. I would like a still shot of me on the ground ("Screen shot") being punched by Shacqua Lewis. If you watch the video it is clearly shown.
3. I would like a still shot screen shot of me on the ground being punched by Dillon Jennings. If you watch the video it's clearly shown.
4. I would like a still shot screen shot of me being punched by Dillon R. Voss the first punch thrown if you watch the video its clearly shown.

I've watched the video and you can clearly see me on the ground not fighting back but being repeatedly punched at individual times by these officers as they to turns beating me. You don't have to beat me to restrain me.

"A still shot screen shot is when you pause the video at the specific incident I've indicated and print out a photo in color.

To whom it may concern:

Exhibit 3

On 7-15-2020 I Marcus Walton the plaintiff sent a request of production of documents for witness statements written on my behalf by Joe Cook and Ray Britten also the Medical Record that I seen the nurse type in about the blunt force trauma to my back also mental evaluations that was not sent All those items was a part of the Courts decree and should of been sent on July 13, 2020 you failed to do so.

Also you objected to the Still Shot Screen Shots of the video sections I've requested denying allegations. I have incident reports from all officers in their handwriting with their signature stating they all struck me several times in the face and head not detained me pursuant to rule 7.2(a) also 37(a)(1) of Fed. Civil. P. I'm contending in good faith they you will send them if not by 8-31-2020 I will file a motion to Compel also a Contempt of Court for failure to follow orders of Courts decree.

Marcus Walton

Po Box 600

Cracko, AZ 85124

Sincerely

Marcus Walton

8-17-2020

Marcus Walton - 152132
PO Box 6000
Greely, AR 71644



Received WD/AR

AUG 26 2020

U.S. Clerk's Office

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